

**INDEMNIFICATION AND COOPERATION AGREEMENT
REGARDING THE WOLD-CHAMBERLAIN FIELD
JOINT AIRPORT ZONING BOARD AND THE
MINNEAPOLIS-ST. PAUL INTERNATIONAL
AIRPORT ZONING ORDINANCE**

This Agreement is made this ____ day of _____, 2002, by and between the Metropolitan Airports Commission (“MAC”), the Cities of Bloomington, Eagan, Mendota, Mendota Heights, Minneapolis, Richfield and Saint Paul and the County of Hennepin (collectively “the Entities”) and Mary Hill Smith, an individual (“M. Smith”).

RECITALS

A. The parties to this Agreement are all of the members of the Wold-Chamberlain Field Joint Airport Zoning Board (“the JAZB”) formed pursuant to the authority of Minn. Stat. § 360.063. M. Smith was appointed by the other members as Chair of the Board pursuant to the authority of Minn. Stat. § 360.063, subd. 3(b).

B. In 1984 the JAZB adopted the *Minneapolis-St. Paul International Airport (Wold-Chamberlain Field) Zoning Ordinance* (“the Ordinance”) to govern land use and the permitted height of structures, vegetation and other potential obstacles in areas proximate to the Minneapolis-St. Paul International Airport (“the Airport”) and under the approach and departure paths for flights to and from the Airport.

C. Under the provisions of the Ordinance, an employee of each of the Entities is designated as the Zoning Administrator who is responsible for administering and enforcing the Ordinance for lands located within each respective Entity.

D. In connection with construction of a new runway at the Airport and with other changes made at the Airport since 1984, the JAZB is considering certain Amendments to the Ordinance (“the Amendments”) that, if formally proposed by the JAZB, must be approved by the Commissioner of the Minnesota Department of Transportation (“the Commissioner”) and adopted by the JAZB before they become effective.

E. If the Amendments are adopted by the JAZB in a form acceptable to MAC, MAC desires that each of the Entities amend its respective comprehensive plan and zoning code to require compliance with the Ordinance as amended by the Amendments (“Amended Ordinance”) and to include the Amended Ordinance as an appendix to its zoning code. MAC also desires that an employee of each Entity act as the Zoning Administrator to administer and enforce the Amended Ordinance within its respective boundaries.

F. The Entities are willing to amend their respective comprehensive plans and zoning codes and to administer and enforce the Amended Ordinance within their respective boundaries. The Entities desire, however, to be protected against possible legal liability that may arise from their doing so.

G. M. Smith desires to be protected against possible legal liability that may arise from serving as Chair of the Board, from actions taken by the Board and by actions taken by the Entities to amend their respective comprehensive plans and zones codes and to administer the Amended Ordinance.

AGREEMENT

In consideration of the mutual promises and consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Adoption Of Amendments And Effectiveness: After the second public hearing on the Amendments, the JAZB shall send its proposed final version of the Amendments to MAC. The MAC Board of Commissioners shall either approve the proposed final draft or respond by stating the changes to the Amendments needed for this Agreement to be acceptable to the MAC. If the JAZB changes the Amendments as set forth by the MAC Board of Commissioners and adopts the Amendments as changed, and if such Amendments are acceptable to the Commissioner of the Minnesota Department of Transportation, this Agreement shall become effective immediately; provided it has been executed by MAC and the Entities.

2. Indemnification Of Entities: In consideration of an Entity's (i) amendment of its comprehensive plan to show the areas affected by the Amended Ordinance and to guide land uses in those areas in conformance with the Amended Ordinance, (ii) amendment of its zoning code to incorporate therein a provision requiring compliance with the Amended Ordinance and to add thereto as an appendix the Amended Ordinance and (iii) designation of one of its employees to act as the Zoning Administrator to administer and enforce the Amended Ordinance within the Entity's boundaries, MAC agrees that, subject to the other provisions of this Agreement, it will indemnify and hold harmless:

- a. the Entity;
- b. any person who serves or has served as the Entity's representative at meetings of the JAZB; and
- c. any officer, employee or agent of the Entity, other than an attorney employed or retained by the Entity, who may hereafter be responsible for or participate in administering or enforcing the Amended Ordinance within the Entity's boundaries,

(collectively, "Indemnified Parties" and individually "an Indemnified Party") from and against any and all losses, liabilities, obligations, costs, expenses, judgments, settlements or other damages (including reasonable attorneys' fees and expenses and reasonable costs of investigating or defending any claim, action, suit or proceeding or of avoiding the same or the imposition of any judgment or settlement) suffered by the Indemnified Party resulting from or arising out of any act of that Indemnified Party in connection with the consideration and adoption of the Ordinance and Amendments by the JAZB, the amendment of its comprehensive plan to show the areas affected by the Amended Ordinance and to guide land uses in those areas in conformance with the Amended Ordinance, the amendment of its zoning code to require compliance with the Amended Ordinance, the incorporation of the Amended Ordinance as an appendix to its zoning code and administration or enforcement of the Amended Ordinance by the Entity.

3. Indemnification Of M. Smith: In consideration of M. Smith's service as the Chair of the JAZB, MAC agrees that, subject to the other provisions of this Agreement, it will indemnify and hold harmless M. Smith from and against any and all losses, liabilities, obligations, costs, expenses, judgments, settlements or other damages (including reasonable

attorneys' fees and expenses and reasonable costs of investigating or defending any claim, action, suit or proceeding or of avoiding the same or the imposition of any judgment or settlement) suffered by M. Smith resulting from or arising out of any act of M. Smith as Chair of the JAZB, in connection with the consideration and adoption of the Ordinance and Amendments by the JAZB or out of the acts of the Entities to amend their comprehensive plans to show the areas affected by the Amended Ordinance and to guide land uses in those areas in conformance with the Amended Ordinance, to amend their zoning codes to require compliance with the Amended Ordinance, to incorporate the Amended Ordinance as an appendix to their zoning codes or to administer or enforce the Amended Ordinance. Therefore, for the purposes of this Agreement, M. Smith shall also be an Indemnified Party.

4. Limitations And Exclusions: MAC will not indemnify an Indemnified Party with respect to liabilities or costs resulting from or arising out of:

- a. a failure by the Indemnified Party or an official, employee or agent of the Indemnified Party to follow the procedures established by the Amended Ordinance, by the comprehensive plan or zoning code of the respective Entity or by applicable state law in performing any act as to which indemnification would otherwise be available under this Agreement;
- b. the gross negligence or willful misconduct of an Indemnified Party or an official, employee or agent of that Party in performing any of the acts as to which indemnification would otherwise be available under this Agreement;
- c. actions involving self-dealing or conflict of interest by the Indemnified Party or an official, employee or agent of that Party; or

d. actions of any individual (whether or not that individual is an Indemnified Party) not performed in an official capacity as a representative of the Entity of which the individual is an official, employee or agent and in direct performance of the individual's duties.

5. Notice Of Claim: If an Indemnified Party receives notice of a claim or of the commencement of an action or proceeding with respect to which the Party believes MAC is required by this Agreement to provide indemnification ("Claim"), the Party must give written notice thereof to MAC within 21 calendar days if the Claim is not asserted in a formal complaint in a legal proceeding, or within 10 calendar days if the Claim is asserted in such a formal complaint ("Notice of Claim"). The failure to give Notice of Claim within the time specified in this section shall relieve MAC of its obligations under this Agreement if in MAC's reasonable judgment the failure is materially prejudicial to MAC's ability to negotiate, settle or defend the Claim.

6. Assumption Or Rejection Of Defense: Within 10 days after receiving a Notice of Claim in accordance with section 5 of this Agreement, MAC must notify the Indemnified Party providing the Notice of Claim either:

a. that MAC will assume complete control of the negotiation, settlement and defense of the Claim and will be responsible for the entire amount of any costs incurred in negotiating, settling and defending the Claim, including any amount required to be paid in settlement of the Claim or in satisfaction of a final judgment, after the conclusion of any appeals, in a lawsuit based on the Claim. MAC must also notify the Indemnified Party of the name and address of the counsel whom it has assigned or retained to perform MAC's duties under this section. Thereafter, except

with the consent of the Indemnified Party, MAC may not enter into any settlement of the Claim that does not include, as an unconditional term of such settlement, receipt from the claimant of an unconditional release to the Indemnified Party from all liability with respect to such Claim; or

b. that the Claim is not a claim for which indemnification is required under this Agreement and that MAC therefore declines to provide indemnification. In such a case, the Indemnified Party may itself control the negotiation, settlement and defense of the Claim at its own expense and may select counsel of its own choice for that purpose, and MAC must cooperate with the Indemnified Party in the respects described in sections 7.a, 7.b and 7.c of this Agreement as if MAC were an Indemnified Party.

7. Cooperation Of The Indemnified Party: As a condition of MAC's obligation to indemnify and hold harmless, an Indemnified Party and any Entity with which an individual Indemnified Party is associated:

a. must make available to MAC and its counsel all of its books, records and documents that MAC or its counsel determines to be necessary for the defense of any Claim for which indemnification is sought;

b. must cooperate fully with MAC to secure any information or testimony that MAC or its counsel determines to be relevant or material to the Claim;

c. must execute all necessary pleadings or other documents in any litigation arising out of, or with respect to, any Claim when requested to do so by MAC or its counsel; provided however, that an Indemnified Party may have counsel of its own choice review any such pleadings or documents, provided that MAC will not be liable

for any expenses relating to an Indemnified Party's consulting such separate counsel;
and

d. must not settle or compromise any Claim for which MAC has undertaken the Indemnified Party's defense without the prior written consent of MAC.

8. Termination Of Indemnification Obligation: MAC's obligation to provide indemnification pursuant to section 2 of this Agreement will terminate:

a. as to an Entity and any Indemnified Party associated with that Entity, if the Entity, having amended its respective comprehensive plan and zoning code as required by section 2 of this Agreement as a condition of its becoming eligible for indemnification, thereafter further amends its comprehensive plan or zoning code so as to change materially the provisions previously adopted pursuant to section 2 of this Agreement;

b. as to any Indemnified Party, if the Indemnified Party or an Entity with which an individual Indemnified Party is associated fails to perform any of its obligations under section 7 of this Agreement and does not correct such failure within 30 days after being given notice by MAC that MAC will cease to provide indemnification if the failure is not corrected;

c. as to any Indemnified Party, if the Indemnified Party or an Entity with which an individual Indemnified Party is associated fails to perform its obligations under section 5 of this Agreement and if such failure is materially prejudicial to MAC's ability to negotiate, settle or defend the Claim; or

d. as to any Indemnified Party, if, after MAC has assumed responsibility for a Claim under section 6.a of this Agreement, MAC or a court or other adjudicating

entity subsequently determines that the Claim is of a type described in section 4 of this Agreement, as to which no indemnification is required, in which case MAC must promptly notify the Indemnified Party that it will no longer provide indemnification.

MAC agrees to notify an Indemnified Party promptly if MAC determines that one of the Limitations or Exclusions in section 4 may apply. In the case of a termination pursuant to section 8.d of this Agreement, MAC shall be entitled to reimbursement of its costs incurred pursuant to section 6.a of this Agreement, and upon receipt of an itemized bill for those costs from MAC, the Indemnified Party shall promptly reimburse MAC for the billed costs.

9. Separate Representation Of Indemnified Party: If an Indemnified Party reasonably determines that there may be a conflict between the positions of MAC and the Indemnified Party in connection with the defense of a Claim, or that there may be legal defenses available to the Indemnified Party different from or in addition to those being asserted on its behalf by MAC, counsel for the Indemnified Party may conduct, at the Indemnified Party's own expense and at no expense to MAC, a defense to the extent that the Indemnified Party's counsel believes necessary to protect the Indemnified Party's interests. In any event, the Indemnified Party shall be responsible for all fees and expenses of its separate counsel arising from or related to the defense of a Claim for which MAC has assumed responsibility under section 6.a of this Agreement.

10. Resolution Of Disputes Between Parties: If a dispute arises between MAC and an Indemnified Party concerning either party's compliance with or obligations under this Agreement and the parties are unable to resolve the dispute by negotiation or other procedure (including mediation or arbitration) on which the parties may agree at the time, any lawsuit

arising from the dispute must be filed in the Minnesota District Court for the Fourth Judicial District (Hennepin County).

11. Notice: Any notice, direction, or instrument to be delivered hereunder shall be in writing and shall be delivered to the following:

To MAC: Metropolitan Airports Commission
Attn: Thomas W. Anderson, Esq.
General Counsel
6040 28th Avenue South
Minneapolis, MN 55450-2779

To City of Bloomington: City of Bloomington
Attn: Mark Bernhardson
City Manager
2215 West Old Shakopee Road
Bloomington, MN 55431-3096

To City of Eagan: City of Eagan
Attn: Thomas L. Hedges
City Administrator
3830 Pilot Knob Road
Eagan, MN 55122

To City of Mendota: City of Mendota
PO Box 50688
Mendota, MN 55150

To City of Mendota Heights: City of Mendota Heights
Attn: Mayor Charles E. Mertensotto
1101 Victoria Curve
Mendota Heights, MN 55118

To City of Minneapolis: City of Minneapolis
Attn: Charles D. Ballentine
Director of Planning
350 South Fifth Street
Minneapolis, MN 55415-1385

To City of Richfield:	City of Richfield Attn: Samantha Orduno City Manager 6700 Portland Avenue South Richfield, MN 55423
To City of Saint Paul:	City of Saint Paul Attn: Mayor Randy Kelly 390 City Hall St. Paul, MN 55102
To County of Hennepin:	Office of the Hennepin County Attorney Attn: Mark Chapin Managing Attorney A200 Government Center Minneapolis, MN 55487
To M. Smith:	Mary Hill Smith 515 North Ferndale Road Wayzata, MN 55391

Such notice shall be either (i) personally delivered (including delivery by Federal Express or other overnight courier service) to the addresses set forth above, in which case it shall be deemed delivered on the date of delivery to said offices, or (ii) sent by certified U.S. Mail, return receipt requested, in which case it shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee, in which event it shall be deemed delivered on the 3rd business day following deposit in the U.S. Mail.

Parties may change to whom notice shall be given by giving notice in accordance with this section, provided that no party may require notice to be sent to more than two addresses.

Any individual who claims entitlement to indemnification under this Agreement must include with the Notice of Claim required by section 6 of this Agreement the address to

which any notice, direction or instrument under this paragraph should be delivered to that individual.

12. Captions: The section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any provision of this Agreement.

13. Construction: The rule of strict construction shall not apply to this Agreement. The Agreement shall not be interpreted in favor of or against either MAC or any Indemnified Party merely because of their respective efforts in preparing it.

14. Governing Law: This Agreement shall be governed by the laws of the State of Minnesota.

15. Complete Agreement; Amendment: This Agreement sets forth the complete agreement of the parties with respect to its subject matter. It may be amended, modified or waived as between MAC and any Indemnified Party only by a writing signed by both of them.

16. Signatures: This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument. Each signatory below represents and warrants that he or she is expressly authorized to enter into this Agreement on behalf of the Party for which that person is signing.

**INDEMNIFICATION AND COOPERATION AGREEMENT
REGARDING THE WOLD-CHAMBERLAIN FIELD
JOINT AIRPORT ZONING BOARD AND THE
MINNEAPOLIS-ST. PAUL INTERNATIONAL
AIRPORT ZONING ORDINANCE**

SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned have caused this Indemnification and Cooperation Agreement to be executed for _____.

Dated: _____

By: _____

Title: _____

Witness: _____

Title: _____